August 25, 2005

Copyright Royalty Board, Library of Congress
P.O. Box 70977 Southwest Station
Washington, DC 20024-0977
Attn: Mr. Bruce G. Forrest

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Re: Comments of Royalty Logic, Inc. responding to the Supplemental Request
for Comments (Fed. Reg. dated July 27, 2005) regarding Notice and
Recordkeeping for the Use of Sound Recordings Under Statutory License.

Ladies and Gentlemen:

Royalty Logic, Inc. ("RLI") hereby submits the following comments in response to the
Supplemental Request for Comments (Fed. Reg. dated July 27, 2005) regarding Notice
and Recordkeeping for the Use of Sound Recordings Under Statutory License (the
"Supplemental Request").

RLI is an agent designated by affiliated copyright owners and performers pursuant to 17
U.S.C. §112(e)(2), §114(e)(1), §114(g)(3) to collect and distribute royalties pursuant to
the relevant statutory licenses addressed by the Supplemental Request.[1]

Answers to the specific factual questions contained in the Supplemental Request (with
the exception of question F1 and the legal and policy questions) are provided by Roger
Ging[2]. Mr.Ging is a recognized expert in the design, development, implementation and
maintenance of music identification and royalty administration systems, including
systems that collect and process records of use for the payment of music performance and
reproduction royalties by broadcasters, as well as wireless and subscription music

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[1] Further, RLI was designated by the Copyright Arbitration Royalty Panel ("CARP") in Docket Number
2001-9 CARP DTRA 1 & 2 to receive and distribute royalties pursuant to the statutory licenses and has
filed its Petition to Participate in the proceeding (Docket No. 2005-1 CRJ DTRA) to determine rates and
terms of the statutory licenses, for the period 2006 through 2010, for the performance of sound recordings
by Eligible Nonsubscription Services and New Subscription Services under 17 U.S.C. § 114, and for the
making by them of ephemeral recordings under 17 U.S.C. § 112(e).

[2] Mr. Ging is the Vice President, Information Technology at Music Reports, Inc ("MRI"). RLI has entered
into a business services agreement with MRI pursuant to which MRI provides certain software
development and data processing services to RLI. Mr. Ging is responsible for all systems and software
development activities at both MRI and RLI and is the chief architect of MRI's Per Program license
administration systems, Songdex Database and related applications. Mr. Ging has created many
specialized song recognition algorithms that are used by MRI and in its role as a catalog identification and
administration agent. Prior to joining the company, Mr. Ging was the founder and president of Pacific
Computer Systems, a company that specialized in the design and development of royalty collection and
distribution systems for various U.S. and European companies.

Appendix B

services in the United States. Systems which have been developed by Mr. Ging (in negotiation with ASCAP, BMI and The Harry Fox Agency), maintain and administer multi-collective use reporting, data and financial dispute resolution, multi-collective "entitled party" data maintenance and receipt and delivery of reports via email, FTP and website delivery. Mr. Ging is also responsible for the development and maintenance of all systems for receipt and processing of records of use and payment of royalties for RLI.

Responses to specific questions contained in the Supplemental Request

A. Spreadsheets

1. How expensive and time-consuming would it be for a typical noncommercial webcaster on the Internet to compile spreadsheets using Microsoft Excel? Using Corel Quattro Pro?

> Response: Aside from the cost of buying the software, there is little or no cost involved in compiling reports using a spreadsheet application. It should be relatively easy for any webcaster that has access to a PC to enter use information into a spreadsheet as the program schedule is being created, or in real time if the schedule is free-form. Also, there are free spreadsheet applications (e.g., Open Office, etc.) that support MS Excel format files.

2. What are the practical difficulties in converting a Microsoft Excel or Corel Quattro Pro spreadsheet into ASCII? How costly is it?

> Response: There are no practical difficulties in converting a spreadsheet into an ASCII file. It is a simple menu driven interface (i.e., File-> Save As-> Save As Type "Text - CSV"). There is no inherent cost associated with this action.

3. What are the kinds of technical support that are typically needed in preparing Microsoft Excel and Corel Quattro Pro spreadsheets and converting them to ASCII? How would that technical support be available to a webcaster and what costs would be involved?

> Response: Most technical support needs will be met through the "help" files included with these spreadsheet applications. Additional technical support, when needed, could simply be a help link on the websites of the collectives, with detailed instructions for the most popular spreadsheet software. RLI is prepared to maintain templates and help files on its website.

B. Commercially Available Software

1. What, if any, commercially available software is available that could be used to compile records of use? Would such software produce records of use that are format compatible with SoundExchange's data processing system? What are the costs associated with such software?

Response: Other than third party systems for the preparation of program schedules by radio broadcasters (e.g., Selector), we are unaware of any such software. Third party systems are generally capable of exporting program pre-broadcast playlist schedules with minimum detail. RLI systems currently support receipt of such data from licensees that utilize certain third party systems.

C. Report Delivery

1. What are the average estimated costs of creating and maintaining a Web site for receipt of records of use? What are the security concerns and how may they be addressed? Is there a commercially available Web site software that could perform this task? Is Web site software available that could be adopted from other SoundExchange uses?

Response: The hours of programming time required to add functionality of this sort to an existing web-site are not significant. Most web-site security is provided using standard SSL encryption, similar to that used by online banking sites. SSL security is far superior to standard FTP security and equal to SFTP (Secure File Transfer Protocol) security. The MRI and RLI websites already contain this capability and RLI is willing to offer web-site uploading of records of use.

2. To what extent can a SoundExchange-hosted Web site reduce costs associated with records of use? Can it assist in organizing and cataloging delivered data and, if so, in what fashion and to what extent?

Response: Web-site record of use upload will be no more or less expensive for the licensee than uploading use reports via FTP (or SFTP). Neither uploading via web-site nor FTP inherently assist the licensee or the collective with the organizational or cataloging efforts. Simple web-site based reports can, however, be developed to assist the licensee in cataloguing and organizing previously delivered reports in a relatively short amount of programming time. However, such reports, if necessary at all, must be based on the reasonable needs of the licensees and not place unnecessary burdens on the copyright owners or their collectives.

3. Could a SoundExchange-hosted Web site be required to provide services with access to prior submitted records of use? For how long?

Response: Yes, functionality of this sort is not difficult to develop or support. File sizes related to records of use may vary greatly (e.g. a service transmitting one channel as opposed to one transmitting fifty channels). Therefore, storage requirements (the primary factor in limiting duration of availability) cannot be reliably estimated at this time. It should be noted, however, that this same functionality can be attained via the FTP model by RLI and SoundExchange. The collectives can simply agree to maintain webcaster files in their FTP upload directories, so that anytime a licensee logs into its account with RLI (or

SoundExchange), all of its previously-uploaded files can be made available for review. We recommend that the collectives not be required to maintain such files on line for more than three years.

D. File Naming

1. What is the ASCII standard for reporting days, months and years? Is one way more cumbersome or expensive than the other?

> Response: ISO Standard date/time formatting requires reporting units left to right from least precision to most precision. Therefore, Year, Month, Day, Hour, Minute, Second, Millisecond is the standard. One advantage to this format is the ability to sort on the date/time directly, without any conversion required – therefore, we recommend the ISO standard. There is no difficulty or expense associated with choice of one format over another.

2. What is required to be technologically capable of assigning file names of the length proposed in the NPRM?

> Response: File names longer than 8.3 (8 characters for primary name, and 3 for "extension" or type) require an operating system that supports "long file names". MS Windows contains support for long file names in all versions since Windows 95. Unix and Linux have always supported long file names.

E. File Extension

1. What difficulties would it create for SoundExchange if reports without .txt file extensions and/or with different file extensions were submitted?

> Response: This presents no difficulty for RLI. However, if existing systems are in place at SoundExchange that expect a particular file naming convention, then those systems would have to be modified, or software created to act as a pre-processing filter to make changes to the file prior to handling by the main system. If no systems exist, then the pre-processor could easily be included in the software main system for file acceptance. NOTE: Such a pre-processor can also be programmed to change all characters to upper case, etc.

2. What difficulties would it create for digital audio services if they were required to use .txt file extensions on their reports?

> Response: There should not be any difficulties whatsoever in creating files with a .txt extension.

F. Delivery Address

1. What standing does RLI have to request copies of the reports of use?

        Response: RLI's standing to receive copies of records of use derives from the direct authorization of RLI's sound recording copyright owner and performer affiliates currently entitled to receive royalties and records of use under the existing statutory licenses. Furthermore, recordings of the RLI affiliates are currently being utilized by the statutory licensees. The RLI affiliates have specifically designated RLI as their agent for the collection and distribution of royalties pursuant to sections 112(e)(2)[3], 114(e)(1-2)[4] and 114(g)(3)[5] of the U.S. Copyright Act. RLI, acting as the authorized agent for its affiliated members, has also filed the appropriate Petition to Participate in the proceedings (Docket No. 2005-1 CRJ DTRA) to determine the terms of certain statutory licenses for the period 2006 through 2010.

        The RLI affiliates include entitled party interests (i.e., featured performing artists and/or copyright owners) in sound recordings featuring such artists as: The Rolling Stones, Metallica, Dr. Dre, Paul Anka, Ray Charles, The Animals, Little Richard, Jimi Hendrix, Patsy Cline, Billie Holiday, Ella Fitzgerald, The Ink Spots, The Mills Brothers, Sarah Vaughn, etc. RLI's affiliates also include sizable catalogues of Spanish language, children's, electronic, house and dance music.

        The Copyright Office has recognized that "royalties cannot be allocated to owners, artists and performers until meaningful information regarding the instances of performances of specific sound recordings or musical works is provided by the services making use of the works."[6] Therefore, the transmission

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[3] §112(e)(2) "...any copyright owners of sound recordings...may designate common agents to negotiate, agree to, pay, or receive...royalty payments."

[4] §114(e)(1) "...in negotiating statutory licenses in accordance with subsection (f), *any copyright owners of sound recordings* and any entities performing sound recordings affected by this section may negotiate and agree upon the royalty rates and license terms and conditions for the performance of such sound recordings and the proportionate division of fees paid among copyright owners, and *may designate common agents on a nonexclusive basis to negotiate, agree to, pay, or receive payments.*"

§114(e)(2) "For licenses...other than statutory licenses...*copyright owners of sound recordings* affected by this section *may designate common agents to act on their behalf to grant licenses and receive and remit royalty payments:...*"

[5] §114(g)(3) "A nonprofit agent designated to distribute receipts...may deduct...prior to the distribution of such receipts to any person...*other than copyright owners and performers who have elected to receive royalties from another designated agent* and have notified such nonprofit agent in writing of such election, the reasonable costs of such agent..." (emphasis added)

[6] Interim Regulations regarding Notice and Recordkeeping for the Use of Sound Recordings Under Statutory License (Fed. Reg. March 11, 2004)

services should also be required to provide vital records of use data directly to RLI as the duly authorized agent of its affiliated owner, and performer interests. This requirement is consistent with the Congressional intent of a multi-party designated agent framework, as reflected in 17 U.S.C. §114(g)(3).

Additionally, it will not be sufficient for RLI to receive such records on a going forward basis from SoundExchange – RLI must receive such records directly from licensees. RLI notes that the Copyright Office previously determined that SoundExchange is required to provide RLI with prior records of use of the Pre-existing Subscription Services (as a proxy for information unavailable from the Eligible Nonsubscription Services). However, SoundExchange has indicated to RLI, in ex parte communication, that it disputes RLI's entitlement to the Pre-Existing Subscription Service records of use, notwithstanding the Copyright Office's determination. Featured performing artists and copyright owners that have designated RLI as their agent, instead of SoundExchange (as is their statutory right, pursuant to sections 112(e)(2), 114(e)(1-2) and 114(g)(3)), should not be forced to litigate with SoundExchange in order to receive the information from licensees that is vital to the distribution of their royalties. Moreover, as the numerous issues presented in the Supplemental Request demonstrate, electronic data delivery and receipt protocols can vary widely, and RLI systems for processing records of use will differ from SoundExchange systems. Electronic data delivery on this scale, as between collectives and services, is routinely a trial and error "process" and not a one-time "event". In order for RLI to function effectively, it will necessarily be required to extensively interface with each service, to ensure that records of use are properly received. SoundExchange could use exclusive privity with services as a means of frustrating the operations of RLI, so as to preclude competition among the collectives. In addition, RLI will rely, to some extent, on systems which have been developed by MRI -- those systems pre-date SoundExchange systems by many years, and RLI should not be required to modify them so as to comport with SoundExchange systems.

2. How expensive and burdensome would it be, on average, for services to provide RLI with records of use in addition to SoundExchange?

> Response: Such a requirement would present no significant additional burden to the transmission services (i.e., the data will be in an electronic file that is easy to transfer). Licenses with ASCAP and BMI commonly require reporting to both collectives.

3. Must all the format requirements be the same?

> Response: Yes. RLI should receive the same file as SoundExchange (i.e., in the common format ultimately adopted for reporting records of use under the statutory licenses).

G. Files With Headers

1. How are files with headers typically organized? Are there any generally recognized standards for music reporting? What are the software requirements and costs associated with creating data files with headers?

> Response: Files with headers generally contain one row containing the headers, with the headers separated by the file's column delimiter and with character data contained in the text qualifier. There are no generally recognized standards for music reporting. Excel or Quattro templates can produce files with headers.

2. Given that preexisting subscription services are not required by Copyright Office regulations to report the data contained in the first six lines of SoundExchange's proposal, what are the costs/benefits to requiring this information in each data file?

> Response: Headers are generally included as a way of verifying the completeness or accuracy of a file, or to define the data columns within the file. The headers requested by SoundExchange seem to be for the former purpose – this is a reasonable request and is supported by RLI. This gives the collectives a way to verify the integrity of the file and provides contact information in case of a faulty file.

> This same benefit can be obtained for zero extra cost utilizing a header-less specification as long as the onus of ensuring that the file transfer occurred successfully (either over the internet or by means of physical media) is placed on the webcaster. For example, MRI, on behalf of broadcaster licensees, transmits monthly performance reports to BMI via FTP and then retrieves the same file and compares it to the original in order to verify complete transmission. This is an automated process.

3. Given that lines 7 and 8 of the header information contained in SoundExchange's proposal are already reported in the file name, what are the costs/benefits of requiring them to be repeated in each data file?

> Response: There is no extra cost or benefit to the data redundancy.

4. To what extent must the header information in SoundExchange's proposal be provided in the requested order? Is any variance possible? What are the costs/benefits associated with variances?

> Response: The order of the data fields when the protocol is initially determined is irrelevant. Data consistency once a protocol has been established, however, is mandatory. All systems exporting and importing these record of use data files will, no doubt, be developed with a presumption that the ordinal location of a given data field denotes a specific record of use data point.

5. What are the problems, if any, associated with the NRBMLC/Salem proposal for files with headers? Do they present compatibility issues with the SoundExchange data processing system and, if so, what are those issues?

Response: Adoption of The NRBMLC/Salem proposal would require SoundExchange and RLI to develop a substantially more complicated data import mechanism. Data exchange formats that allow for fluctuating field location and file content (other than files that comport to the XML specification) are not standard.

6. Can there be flexibility in the regulations for the creation of files with headers or must the regulations be rigid?

Response: The regulations must be rigid so that systems can be written to expect a file in a consistent specification.

H. Field Delimiters and Text Indicators

1. What are the industry standards for use of field delimiters and text delimiters? Should particular ones be specified in the regulations? To what extent is flexibility acceptable in their selection?

Response: There are several "Industry Standards" for delimited text files. Of them, the most common are:

1. Tab Delimited - columns are separated by the TAB character (ASCII 22) and there are no text qualifiers. No column may contain an embedded TAB character.

2. CSV or Comma Separated Values - columns are separated by commas, and columns containing data other than numeric data are surrounded with quotes. This format allows non-numeric data columns to contain commas, but does not allow quotes in any data column.

The pipe/carat specification, as suggested by SoundExchange, is a reasonably common alternative to TAB and CSV delimited files, with the intent being to use characters not generally found in data columns to prevent ambiguity in the file.

There cannot be any flexibility within the specification.

2. What problems will be created by allowing the use of commas and quotes as field delimiters and text indicators, respectively? How can such problems, if any, be avoided?

Response: Any occurrences of quote characters within song titles, artist names etc. will cause a corruption of the data file (i.e., an artist data field value of "Cole,

Nat "King"" would render the file impossible to import without manual intervention). The SoundExchange proposal avoids these problems.

I. Data Fields

1. What are the costs/benefits of requiring all data fields to be in upper case characters? Will the SoundExchange data processing system accept lower case characters in a data field and combinations thereof?

> Response: This should not be an issue to any involved party. Any data processor (i.e., the licensees or the collectives) can easily, and without significant cost, convert a data file during import or export to all upper case characters.

2. What is the industry standard for data fields?

> Response: There is no industry standard for character case.

J. Abbreviations

1. What problems, if any, does allowing abbreviations within data fields present to SoundExchange's data processing system? How can these be addressed?

> Response: Abbreviations within data fields are a very common practice. RLI has extensive algorithms and cross references to recognize abbreviations in the identification of sound recordings and musical works where abbreviations are contained in data fields.

2. Can a set of rules be developed that permit abbreviations within data fields and, if so, what should these rules be?

> Response: The rules should be implemented by the collectives in the internal software that matches the record of use with the collectives' internal databases. All existing organizations that routinely interact with data of this sort (i.e. ASCAP, BMI, SESAC, The Harry Fox Agency, MRI, etc.) have already gone through this exercise. These rules involve multi-criteria matching algorithms that in our experience involve thousands of lines of code, the responsibility for which most properly rests with the separate collectives.

3. What are the burdens and costs associated with the creation and maintenance of a database of sound recording titles, album titles, artists' names, etc. by SoundExchange? What should be the functionality of such a database? How could such a database be utilized to reduce the overall costs of reporting records of use?

> Response: There is no current need for a public database as it is generally the responsibility of the separate collectives to take use information and match it to internal databases. Sound Exchange and RLI already maintain such databases for

the purpose of tracking and paying royalties due their members. Forcing the licensee to utilize the databases of the collectives, where the licensee's internal information is likely to be different, would reduce the cost of the collectives but increase the costs for the licensees. Moreover, such databases are not static - they change daily as records are updated and new material is released. Publishing such dynamic databases to the public is fraught with complications and significant costs for the collectives. This should be an internal function of the collectives.

K. Files Without Headers

1. Are there industry standards for compiling data files without headers and, if so, what are they? What are the costs/benefits of compiling data files without headers versus those with headers?

> Response: No, there are no industry standards for compiling data files without headers. The benefit of a file with headers is the ability to verify the integrity of the file. The benefit of a file without headers is that the files may be able to be created using a standard query to the program management software in use by the service (e.g., Selector). Regardless of the format agreed upon, systems can and will need to be written by the collectives to import records of use in accordance with the format.

2. How flexible can the format requirements be for files without headers? What are the options?

> Response: One possible approach would be to use XML files, which are self-describing. Requiring the inclusion of at least the fields necessary for the reporting of records of use, in XML format, would allow broadcasters some freedom in the data storage used, and would allow the collectives to extract the data required for royalty payments. The obvious downside to this approach, however, is that systems to import and export XML files are substantially more time-consuming to develop.

> Adoption of a formal specification is, by far, the most common and cost-effective approach to data file exchange.

3. Can categories of data be submitted in separate files or must it all be submitted in a single file? What is the capability of SoundExchange's data processing system to handle more than one file of data per Service?

> Response: The file-naming convention described in the interim reporting rules does not anticipate multiple categories of data to be submitted. Further, submission of multiple relational data files from a given service would not simplify or streamline exchange of this particular type of data and may, more likely, lead to data processing confusion and errors.

4. To what extent could it be permissible to allow automated services to report playlist data in native form to SoundExchange?

> Response: The variety of native formats is potentially unlimited. Requiring a collective to develop software to support each native format places an unreasonable burden on the collectives.

Legal and Policy Questions

1. Did Congress, in 17 U.S.C. 114(f)(4)(A) and 112(e)(4), require the Copyright Royalty Judges to prescribe particular formatting and delivery requirements at the level of detail described in the April 27, 2005, notice of proposed rulemaking? Is there some relevant set of Internet conventions or practices that could guide the Board in setting data submission standards here?

> Response: We are not aware of internet conventions that are on point, however, the concept of "reasonable records of use" requires that copyright owners be able to cost-effectively determine what recordings were actually used and the number of compensable performances associated with those recordings to determine royalties due from licensees. Within this requirement there is some flexibility, but records of use will involve a great deal of detail. The collectives designated by copyright owners and performers must utilize computer technology to process such detailed information from potentially thousands of licensees. Therefore, defined reporting formats must be adopted to ensure that the cost associated with the administration of statutory royalties does not become prohibitively high.

2. Could a system of webcast sampling, analogous to the sampling performed by performing rights societies in the context of broadcasting, meet the record-of-use requirements of 17 U.S.C. 114(f)(4)(A) and 112(e)(4)?
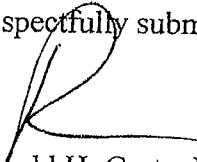
> Response: Yes. Although census reporting is always preferable to ensure the accuracy of royalties calculated and distributed, as a practical matter, sampling could be employed in certain cases where census information may be unavailable (e.g. corrupted data files, server outages etc.) ASCAP and BMI have used sampling methodologies successfully for years in their distribution systems. Such sampling techniques have allowed them to incorporate and recognize performances of works where census data was not available or prohibitively expensive to obtain. Because webcasters are more likely to maintain census data than analogue broadcasters, and such data is likely to be available to report to the collectives without undue costs or hardships, census reporting should be the standard required. However, RLI would acknowledge and accept that sampling methodologies could be substituted for census reporting where practical and warranted.

3. Under the provisions of any final rule adopted to implement the notice and record of use requirements of 17 U.S.C. 114(f)(4)(A) and 112(e)(4), either copyright owners (in the

form of their agent, SoundExchange) or licensees will be burdened with having to change their existing data systems. From a legal and a policy perspective, on whom is it most appropriate to place these burdens? Is the court's discussion in Amusement and Music Operators Association v. Copyright Royalty Tribunal, 676 F.2d 1144, 1154-55 (7th Cir. 1982), cert. denied, 459 U.S. 907 (1982) ("depriving copyright owners of increased remuneration for the exploitation of their works by showing that some * * * operations will become unprofitable is * * * unsound and unjust") pertinent to this inquiry?

> Response: As long as a standard format is defined and required (and, if limited, beyond the current specification, only to the reasonable issues presented in the Supplemental Request), changes required to existing systems of the agents designated by copyright owners and performers should be minimal and present no significant burden beyond what is otherwise required to process royalties. Whatever changes are required to be made by the services in order to provide the basic information required by copyright owners to calculate royalties due, are a necessary part of the statutory license.

Respectfully submitted,

Ronald H. Gertz, Esq.
President and CEO